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COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
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HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
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Press and Information

PRESS RELEASE No 85/04

21 October 2004

Judgment of the Court of Justice in Case C-8/03

Banque Bruxelles Lambert SA (BBL) v Belgian State

ACTIVITIES CARRIED OUT BY OPEN-ENDED INVESTMENT COMPANIES (‘SICAVS’) ARE ECONOMIC ACTIVITIES AND THOSE COMPANIES ARE THEREFORE TAXABLE PERSONS FOR VAT PURPOSES

Management and consultancy services supplied to them are taxable under the legislation in force in the State in which the SICAVs have established their business. Accordingly, services supplied to SICAVs in Luxembourg by a bank established in Belgium are subject to Luxembourg law.

Banque Bruxelles Lambert SA (‘BBL’), which is established in Belgium, supplied assistance, information and advice services to open-ended investment companies (SICAVs) established in Luxembourg in relation to which it did not account for value added tax, as it took the view that the services were provided in the Grand Duchy of Luxembourg and that SICAVs were not considered to be subject to VAT there.

As they were of the opinion that, under Belgian legislation, an exemption was not available and that the place where the supplier of the services was established was the decisive factor for purposes of calculating VAT, in 1998, the Belgian tax authorities assessed BBL to VAT for the period from 1993 to 1997 (a total amount of almost EUR 140 000 000, including EUR 45 491 373.03 by way of VAT due, EUR 90 982 746.07 by way of a fine at the rate of 200% and EUR 1 819 654.49 in respect of interest on late payment).

BBL considered that that interpretation was contrary to the Sixth VAT Directive.¹ It therefore challenged the assessment before the Tribunal de première instance de Bruxelles (Brussels Court of First Instance), which asked the Court of Justice of the European Communities whether SICAVs established in a Member State are subject to VAT and, if so, where services supplied to them are to be treated as taking place.

¹ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes

The Court confirmed, first, that SICAVs are taxable persons under Community law because their activities, which go beyond the mere acquisition and sale of securities, constitute economic activities. Accordingly, SICAVs come within the scope of the common system of VAT under the Sixth VAT Directive.

The Court stated that it follows that, **where services are supplied to SICAVs which are established in a Member State other than that of the supplier of the services, the place where those services are provided is the place where the SICAVs have established their business.** While the directive lays down the principle that the place where services are supplied is the place where the supplier has established his business, it nonetheless includes derogations to that principle, one of which provides that, where services of consultants and banking and financial transactions are performed for customers established in the Community but not in the same country as the supplier, the place where those services are provided is the place where the customer has established his business.

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Languages available: FR; EN; DE; EL; IT; NL

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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